

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

December 12, 2008

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING: Conservation District Enforcement HA 09-09 Regarding
Alleged Unauthorized Stockpiling of Material Within the
Conservation District

BY: William Cory Foulk
Kona Bali Kai

LANDOWNER: Various Condominium Owners

AREA OF USE: Approximately 150 linear feet along the shoreline

LOCATION/ Seaward of 76-6346 Alii Drive
Honolua, North Kona, Island of Hawaii

TMK: (3) 7-6-015:023

SUBZONE: Resource

BACKGROUND:

On June 22, 2007, the County of Hawaii determined that a project proposed on behalf of the Kona Bali Kai by William Cory Foulk for repair and renovation of an existing seawall and reinstallation of the topsoil and the grass lawn within the shoreline setback area qualified as a minor activity. Therefore no setback variance was required and this exemption was granted subject to 8 conditions under Special Management Area Use Permit Assessment Application (SAA 07-000258).

On August 4, 2008, the County of Hawaii issued a Special Management Area Violation relating to SAA 07-000258 and issued a cease and desist from any further work on the exempt project. A site inspection of the area by Hawaii County verified that the work done had exceeded what was approved. As stated in the Hawaii County violation notice, *"SAA 07-000258 did not include approval to remove the existing seawalls, the trenching, and excavation of the bank and the pouring of concrete footing. There was also evidence of heavy machinery operating within the shoreline setback area."* It appears that Mr. Foulk has removed an existing seawall that previously defined the shoreline. During these actions, earth material from the excavation was stockpiled on the makai side of the project area adjacent to the ocean.

Photos taken of the subject area on September 17, 2008 were forwarded to the Office of Conservation and Coastal Lands as stockpiled material had remained on the shoreline

since June 2008. Based upon the photographic evidence, it appeared that a Conservation District use violation had occurred as fill material appears to be stockpiled seaward of the shoreline (**Exhibit 1 & 2**).

DESCRIPTION OF AREA:

The subject area is located on the west side of the island of Hawaii in Holualoa, North Kona. The parcel is located in the Urban State Land Use District and contains a three-story condominium with basement parking. The shoreline that defines the Conservation district is a rocky coast with intermittent sand and stony beaches. The U.S. Geological Survey's Atlas of Natural Hazards in the Hawaiian Coastal Zone publication notes the subject area has an overall high hazard assessment rating of 6 on a scale of 1 to 7. The generally low-lying coast is vulnerable to marine overwash and inundation. The seawalls fronting the condominium have been damaged on several occasions. Records on file indicate that the ocean's energy has destroyed portions of a seawall over the years as repair and maintenance of the structure was requested in 1996, 2000 and 2005. (**EXHIBIT 3, 4, 5, 6, 7 & 8**).

The last certified shoreline of the parcel was November 19, 1995 that identified the makai face of the former seawall alignment as the certified shoreline (**Exhibit 9**).

ALLEGED UNAUTHORIZED LAND USE:

Stockpiled earth material appears to be within the Conservation District. The OCCL has no record of authorization for the subject land use. On two separate occasions a Notice and Order was sent to the alleged to cure this matter. The stock piled material remains on the shoreline.

The first Notice and Order, dated September 22, 2008, required the alleged to remove the material away from the shoreline by October 31, 2008. This order was met with questions regarding where the shoreline was located. The alleged and Kona Bali Kai's counsel was told the shoreline was not certified therefore not established and to work with the County to determine a site to move the stockpiled material (**Exhibit 10 & 11**).

A status check e-mail was sent to the alleged on October 21, 2008 to attempt to determine if the alleged was taking action on the Notice and Order as Staff was unable to contact the alleged via phone. This inquiry was met with a series of e-mails questioning the Department's jurisdiction, "lack of communication" and stating that the Department's actions "seem like a random and capricious enforcement action." (**Exhibit 12**)

A later e-mail states that the removal of the material would "endanger the buildings proper by undermining the foundations with the removal of material." The e-mails alluded that the situation was practically caused by the State by stating, "We need your involvement at a direct level to take responsibility for any directive to remove and specify an exact distance. We would therein hope to dilute liability by offering your directive up when catastrophic damage occurs." (**Exhibit 13**)

A site inspection conducted by the Kona Division of Conservation & Resource

Enforcement (DOCARE) on November 6, 2008 revealed that little had been done to remove the material. A Second Notice and Order was issued on November 14, 2008 and sent via certified mail to the alleged. This second Notice and Order was also sent via e-mail to the alleged and Kona Bali Kai's counsel. The Department's jurisdiction was again questioned by the alleged (**Exhibit 14, 15 & 16**).

Staff believes the subject area lies within the Conservation District as past correspondences indicate that the wash of the wave has deteriorated the rock wall that was the subject of repair. A March 15, 1996 correspondence states, "At times high wave wash actually spilled over the wall. There was structural damage to the wall as a result of rocks being loosened." A November 23, 2005 correspondence states, "the old wall has been destroyed and a portion of the BBQ area slab has been eroded away...rocks washed ashore into the condo's parking area-some 20 to 30 feet from the shoreline." Photos of the area indicate the proximity of the stockpiled material to the ocean (**Exhibits 1, 2, 8a, 8b & 14**).

Resolution of Unauthorized Land Uses

The Department and Board of Land and Natural Resources has jurisdiction over land lying makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to §205A-1, Hawaii Revised Statutes (HRS).

Staff believes that earth material has been stockpiled within the Conservation District based upon the wave run up and coastal process erosion that has taken place in the subject area. The OCCL believes there is sufficient cause to bring this matter to the Board, as the shoreline has been a contentious issue with the Kona Bali Kai for the past couple of years. It is evident that portions or the entire stockpiled material are within the Conservation District pursuant to the Hawaii Administrative Rules (HAR), §15-15-20 Standards for determining "C" conservation district boundaries:

It shall include lands **having an elevation below the shoreline** as stated by §205A-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to §501-33, HRS, unless otherwise designated on the district maps. All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps.

Conservation District

Chapter 13-5, Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by a Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapter 13-5, HAR defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land.

Staff believes that the placement of the stockpiled material within the shoreline is unlawful and is within the jurisdiction of the Department and Board of Land and Natural Resources. Staff recommended conditions and this report seeks to resolve this conservation district violation. Pursuant to Chapter 183C, HRS, the maximum fine for a conservation district violation is \$15,000.00 per violation, and \$15,000.00 per day for failure to stop work.

Enforcement of Chapter 205A, Hawaii Revised Statutes (HRS) Related to Coastal Zone Management

Chapter 205A, HRS embodies policies, objectives and directives to protect and conserve natural resources including, beaches, and public access. One element of this law provides for the integration of enforcement efforts between the State and County authorities. For unauthorized shoreline structures, the “shoreline area” is loosely defined and may extend seaward of the shoreline to include the entire structure. Thus, the County authority may enforce the matter despite the fact the structure is seaward of their normal jurisdiction (HRS, §205A-41, Definitions).

Hawaii Revised Statutes, Chapter 205A, Coastal Zone Management §205A-43.6 states:

- (a) The department or an agency designated by department rules shall enforce this part and rules adopted pursuant to this part. Any structure or activity prohibited by section 205A-44, that has not received a variance pursuant to this part or complied with conditions on a variance, shall be removed or corrected. No other state or county permit or approval shall be construed as a variance pursuant to this part.
- (b) Where the shoreline is affected by an artificial structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this part, the structure shall be construed to be entirely within the shoreline area.
- (c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under chapter 183C shall not be diminished by an artificial structure in violation of this part.

Staff believes that the Board may also undertake enforcement actions on unauthorized shoreline land uses even without the benefit of a shoreline delineation in order to uphold the directives of Chapter 205A, HRS. HRS, §205A-43.6(a) requires the landowner in violation of this part to either remove the structure or correct the problem. Therefore the Board, under part (c), may assert its authority to compel the removal of the structure or correct the problem in order to protect the coastal resources and uphold the directives of Chapter 205A, HRS.

Discussion

The shoreline is not the place to stockpile earth material, as the area is dynamic,

unpredictable and subject to change. Based upon complaints received in the summer, the stockpiled material appears to have been there at least from June through the autumn season. The Department has ordered the removal of the earth material on two separate occasions to no avail.

It is unclear why the Kona Bali Kai continues to attempt to repair a seawall that the sea's energy continues to bash and damage. The ocean may reclaim this portion of the coastline as evidence of the high wash, erosion and damage to the wall. Waves have overtopped the former wall in the past. During a storm event, waves have extended to the underground parking lot. These energies should be mitigated and properly planned for through applicable processes such as getting the shoreline certified.

Staff notes, Kona Bali Kai has never completed the certified shoreline process. The application has been rejected and has expired on 2 occasions, as the consultant did not respond to requests for more information by the State. **Exhibit 17** lists the chronology of actions taken by Kona Bali Kai. Staff believes all matters regarding the seawall and shoreline could have been resolved had the consultants for Kona Bali Kai been more attentive to the shoreline certification process and if the alleged had simply complied with the Department's Notice and Order and removed the stockpiled material away from the shoreline.

The OCCL understands the need to balance the concerns of the landowner with those of public resource conservation. However, the DLNR cannot ignore blatant displays of disregard for our laws. The shoreline area up to the highest wash of the waves shall be held in the public trust. Staff believes the natural and cultural resources; shoreline lateral access; the public's safety and the public good shall be compromised further should this situation not be resolved expeditiously.

The fill material may leach and soil the beach and ocean. The disintegrating plastic that covers the material may be eaten by avifauna and endangered turtles. Staff would like the stockpiled material to be moved away from the shoreline immediately to prevent this and to protect the natural resources. Staff would like the Kona Bali Kai to complete the shoreline certification process.

Staff believes that the contractor and/or the landowner(s) should be fined one time for stockpiling the material along the shoreline and two times for noncompliance of two Notice and Orders. In addition, Staff will recommend administrative penalties. This submittal and notice of the Board's meeting shall be sent to William Cory Foulk and Kona Bali Kai's counsel by certified mail to the address on record in Hawaii.

Findings

1. That William Cory Foulk on behalf of Kona Bali Kai did in fact, authorize and cause the unauthorized stockpile of material to occur within the shoreline;
2. That the unauthorized land use is within the State Land Use Conservation District, Resource subzone, as evidenced by the wash of the waves; and

3. That William Cory Foulk on behalf of Kona Bali Kai failed to heed to two separate Notice and Orders issued by the Department.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board finds Consultant, William Cory Foulk and the Landowner, Kona Bali Kai in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

1. The consultant/landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in one instance by allowing stockpiled material within the shoreline, and failing to cease and desist after written notification on two separate occasions. The alleged is fined a total of \$45,000.00 for three Conservation District violations;
2. The consultant/landowner is fined an additional \$2000.00 for administrative costs associated with the subject violations;
3. The consultant/landowner shall pay all fines (total \$42,000.00) within sixty (60) days of the date of the Board's action;
4. The consultant/landowner shall remove the stockpiled material within fifteen (15) days of the date of the Board's action;
5. The landowner shall apply for a certified shoreline within sixty (60) days and complete the process;
6. That in the event of failure of the consultant/landowner to comply with any order herein, the landowner shall be fined an additional \$15,000.00 per day until the order is complied with; and
7. That in the event of failure of the consultant/landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources



June 2008 Kona Bali Kai shoreline



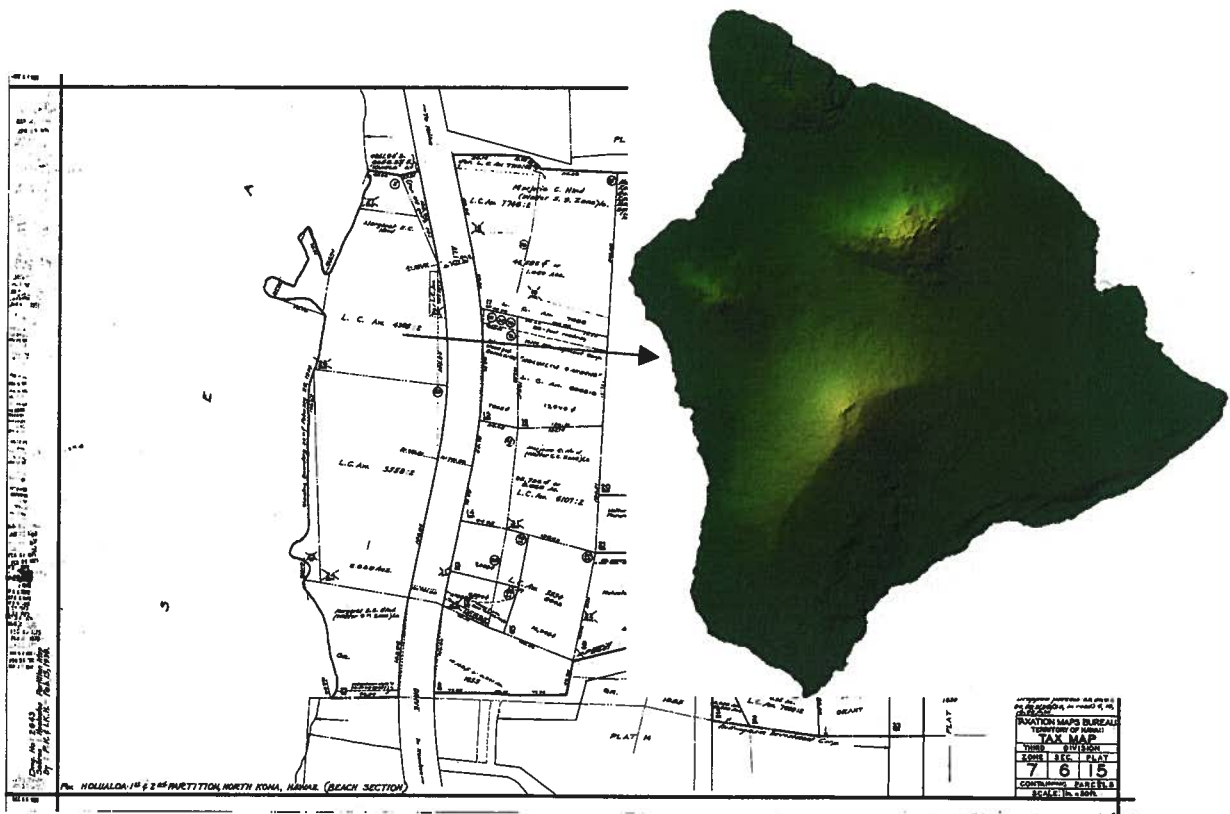
Photo below illustrates a trench dug and filled with concrete.





Site Inspection
Kona Bali Kai
TMK: (3) 7-6-015:023
September 17, 2008

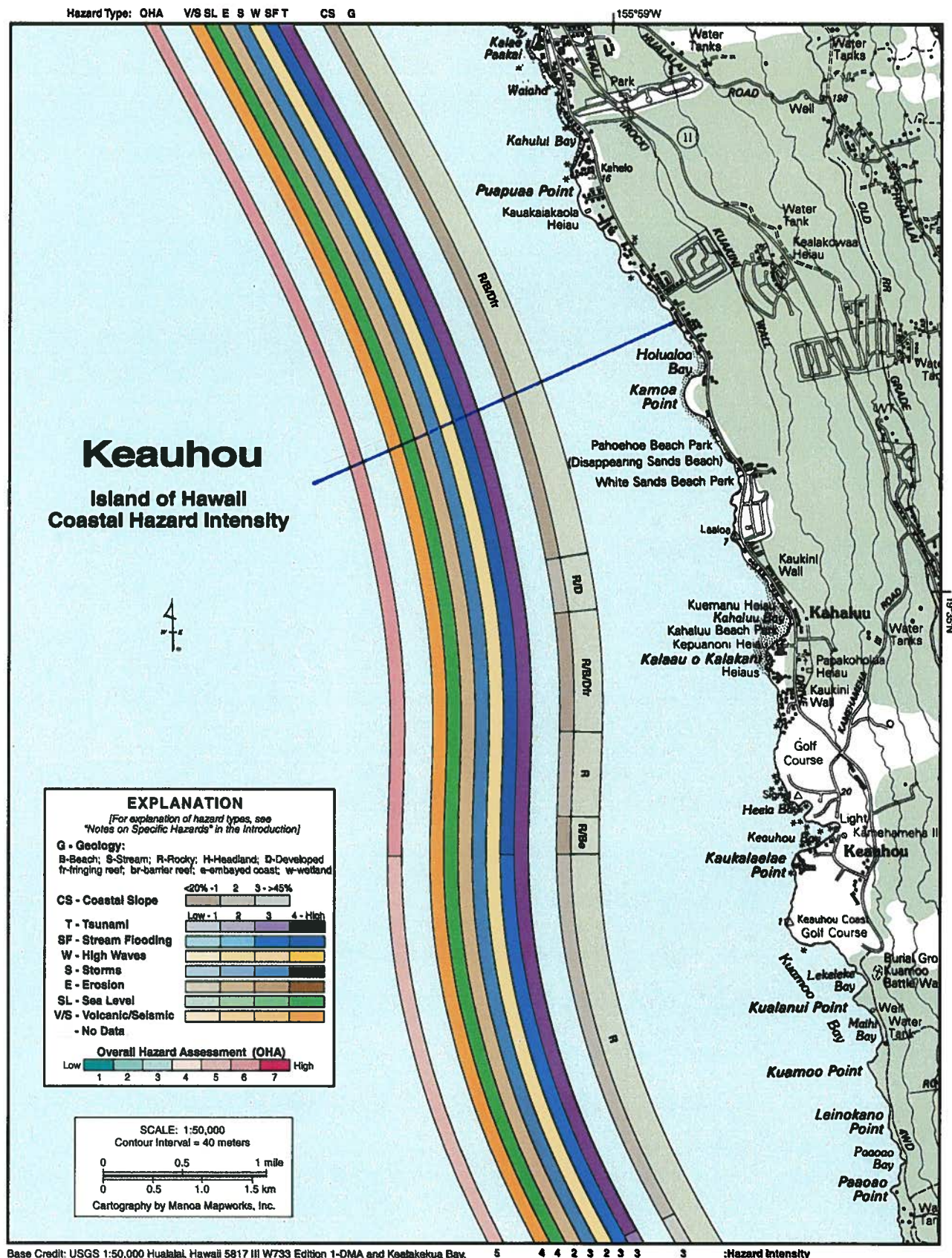




Kona Bali Kai Located on the shores of Holualoa, North Kona, Hawaii, TMK: (3) 7-6-015:023



EXHIBIT 3





P.O. Box 4613, Kailua-Kona, HI 96745
73-5568 Kauhola St. Bay #5, Kailua-Kona, HI 96740
Phone: (808) 326-1415 Fax: 329-5475

Michael J. Krochina, P.E.

March 15, 1996

State of Hawaii
Dept. of Land &
Natural Resources
P. O. Box 621
Honolulu, HI 96809

Ref: Kona Bali Kai Condominium
T.M.K. 7-6-15:23
Our Job No. 94085

Attn: Dean Uchida

The following is a letter clarifying and detailing the proposed work at the shoreline of Kona Bali Kai Condominiums project. The existing wall which was constructed in 1978 Ca. has deteriorated in certain areas immediately in front of the ocean side. At times high wave wash actually spilled over the wall. There was structural damage to the wall as a result of rocks being loosened. It is imperative that the existing seawall be repaired to avoid ensuing property damaged to the condominium immediately mauka of the wall. ✓

We have attached specifications and proposed construction procedures for the contractor to implement during the seawall repair. Based on the work taking place only at low tide and when surf allows and the fact that no grout material of any kind shall enter the ocean water, we respectfully request that we be given approval for the described work above without filing a D.L.N.R. Department Master Application Form.

I would appreciate your expediting a right-of-entry to the government lands seaward of the seawall as soon as possible and thank you for your consideration of the above.

Sincerely,

Michael J. Krochina, P.E.

MJK:ahc

Enclosures

RECEIVED
DIVISION OF
LAND MANAGEMENT
MAR 22 8 58 AM '96

EXHIBIT 5

SHORELINE CERTIFICATION

For property owned by
KONA BALI KAI CONDOS

At HOLUALOA 1st AND 2nd
NORTH KONA, COUNTY OF HAWAII
ISLAND OF HAWAII

T.M.K.: (3) 7-6-15:23



- NOTES:**
- ① DENOTES HIGHWATER MARK DETERMINED ON NOVEMBER 2, 1971 BY ELAND SURVEYORS, INC.
 - ② DENOTES HIGHWATER MARK DETERMINED BY PLAIN DATED MARCH 17, 1984.
 - ③ DENOTES HIGHWATER MARK DETERMINED BY KONA SURVEYORS SEPTEMBER 8, 1988.
 - ELEVATIONS ARE REFERENCED TO MEAN SEA LEVEL AND ARE TAKEN FROM ACTUAL STAFF READINGS.
 - FIGURES SHOWN TIMELY → INDICATES POSITION, LOCATION AND DIRECTION OF PHOTOGRAPHS

ALII DRIVE

3 STORY CONDOMINIUM
(154 UNITS)

REPAIR/MAINTENANCE
UNDISTURBED AREA

- LEGEND**
- COCONUT TREE
 - SEA GRAPE
 - PHOTOS

Reid & Associates Inc.
Civil and Sanitary Engineers
1000 Kalia Road, Suite 200
Honolulu, Hawaii 96813
Phone: 838-8888



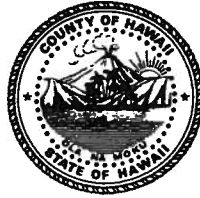
Michael C. Reid
Michael C. Reid, P.E.
Professional Engineer, State of Hawaii
License No. 15409, dated 3-8-85

DRAWN BY: JM
JOB NO. 356095
DATE: 3-8-85
JOB: KONA BALI KAI CONDOS
JOB: 356095/100



EXHIBIT 5a

Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

August 28, 2000

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

Mr. Gerald Lucero
Resident Manager
Kona Bali Kai Condominiums
76-6246 Alii Drive
Kailua-Kona, Hawaii 96740

Dear Mr. Lucero:

Special Management Area Use Permit Assessment Application No. 00-24 (SMAA00-24)
Applicant: Gerald Lucero, Resident Manager
Request: To Allow the Repair and Replacement of Portions of an Existing Seawall
TMK: 7-6-015: 023

We are in receipt of the above-described application to allow for the repair and replacement of portions of an existing seawall fronting the Kona Bali Kai Condominium, all of which are situated within the County's Special Management Area (SMA).

The proposed repair and replacement of an existing seawall will include the following activities:

1. partial demolition and repair to concrete footing;
2. re-construction of approximately 55 lineal feet of existing seawall with the filling of mortar within all joints and along footing;
3. repair/reconstruction of seawall will maintain existing height of seawall ranging from 1.5 to 3.0 feet;
4. placement of mortar along top of seawall along its length; and
5. drop cloths will be placed along mauka and makai side of seawall during repair/reconstruction work.

A July 10, 2000 site inspection of the subject property and the project site was conducted by me and Jeff Darrow, our Coastal Zone Management Inspector. The plans submitted with the subject application is consistent with the proposed improvements as described during our site inspection. Therefore, this letter will inform that the proposed repair and replacement of portions of an existing seawall fronting the Kona Bali Kai Condominium is not defined as "development" according to Section 9-4(10)(B)(vi) of Planning Commission Rules of Practice and Procedure regarding the Special Management Area. Further review of the proposed project against our SMA regulations will not be required.

EXHIBIT 6

6

Mr. Gerald Lucero

Page 2

August 28, 2000

You are also informed that the proposed project is permitted within the County's Shoreline Setback Area pursuant to Section 11-7(b) of the Planning Department Rules of Practice and Procedure.

In summary, you may proceed within the proposed repair and replacement of portions of the existing seawall. Please note that these approvals do not relieve the landowner from complying with all other applicable governmental approvals, such as the need to secure a building permit, if required.

Please feel free to contact Daryn Arai of our Kona office at 327-3510 should you have any questions.

Sincerely,



 VIRGINIA GOLDSTEIN
Planning Director

DSA:rld

p:\wpwin60\CZM\SMMA\2000\SMMA00-24.doc

xc w/copy of application: West Hawaii Office



DON McINTOSH SURVEYING, INC.
P. O. Box 58, Kailua-Kona · Hawaii 96745-0058

Don McIntosh
Licensed Professional Land Surveyor · LS-4968

(808) 960-0702
Res. (808) 329-8830
Facsimile (808) 329-8840
Email: dclintmc@yahoo.com

November 23, 2005

Peter Young, Chairman
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813

RE: SHORELINE CERTIFICATION
KONA BALI KAI CONDOMINIUM AT HOLUALOA
North Kona, Hawaii, Hawaii
TMK: (3) 7-6-15:23 – JOB 3767-05

Dear Mr. Young:

I am resubmitting, for your review and certification, the shoreline which was certified several times in the past. The last certification (1995) also dealt with repairing the existing rock walls (sea walls).

As can be seen, in Photos I through L and L-1, the old wall has been destroyed and a portion of the BBQ area slab has been eroded away – see Photo K. The erosion has not been gradual, but violent with the above-normal wave action due to storms.

Please note that a second storm of high waves (photo taken on 11/18/05) has done even more damage to the existing walls and BBQ slab. One photograph shows the rocks washed ashore into the condo's parking area—some 20 to 30 feet from the shoreline.

I am also enclosing my letter of October 26, 1989 stating some of the walls may have existed in 1939. It is apparent that with the winter storm season upon us again, that a permit to repair the damages along the shoreline be granted as soon as possible; and as you know, a certified shoreline needs to be approved before a permit can be issued.

The Transmittal Letter lists all required submittals.

If there are any questions, please feel free to contact me at my numbers above.

Donald C. McIntosh, L. P. L. S.
Consultant-Planner, Developments

DCM/jlkm

Encls.

EXHIBIT 7



PHOTOS TAKEN ON NOV. 18, 2005
AFTER THE HIGH SURF WAVES

KONA BALI KAI CONDOMINIUM
TMK: (3) 7-6-15:23 JOB 3767-05

PAGE 2 OF 3

EXHIBIT 7a



PHOTOS TAKEN ON NOV. 18, 2005
AFTER THE HIGH SURV WAVES



KONA BALI KAI CONDOMINIUM
TMK: (3) 7-6-15:23 JOB 3767-05



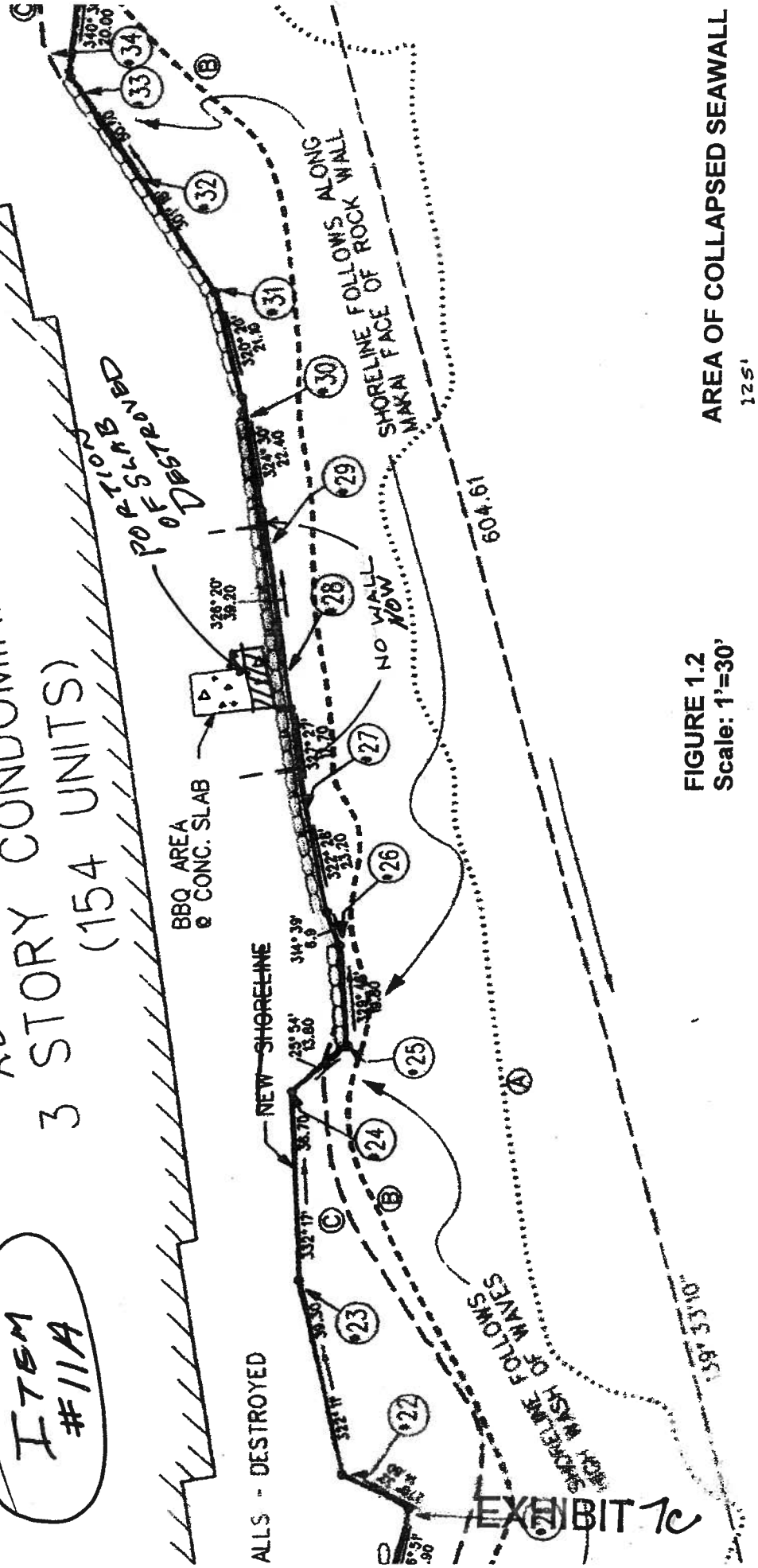
330.40' 188.04' 333

S PER DEED = 3.037 ACRES
ELINE AREA = 1.064 ACRES
INING AREA = 2.273 ACRES

JOB 3767-05
TMK: (3) 7-6-15:23
CERTIFIED SHORELINE
OF NOV. 15, 1995

KONA BALI KAI
3 STORY CONDOMINIUM
(154 UNITS)

ITEM
#11A



AREA OF COLLAPSED SEAWALL
125'



JOB 3767-05
 TMK: (3) 7-6-15:23
 SHOWING DESTROYED
 AREA OF EXISTING
 WALL

AREA AS PER DEED = 3.037 ACRES
 1ST SHORELINE AREA = 0.782 ACRES
 REMAINING AREA = 2.255 ACRES

ITEM
 #11B

KONA BALI KAI
 3 STORY CONDOMINIUM
 (154 UNITS)

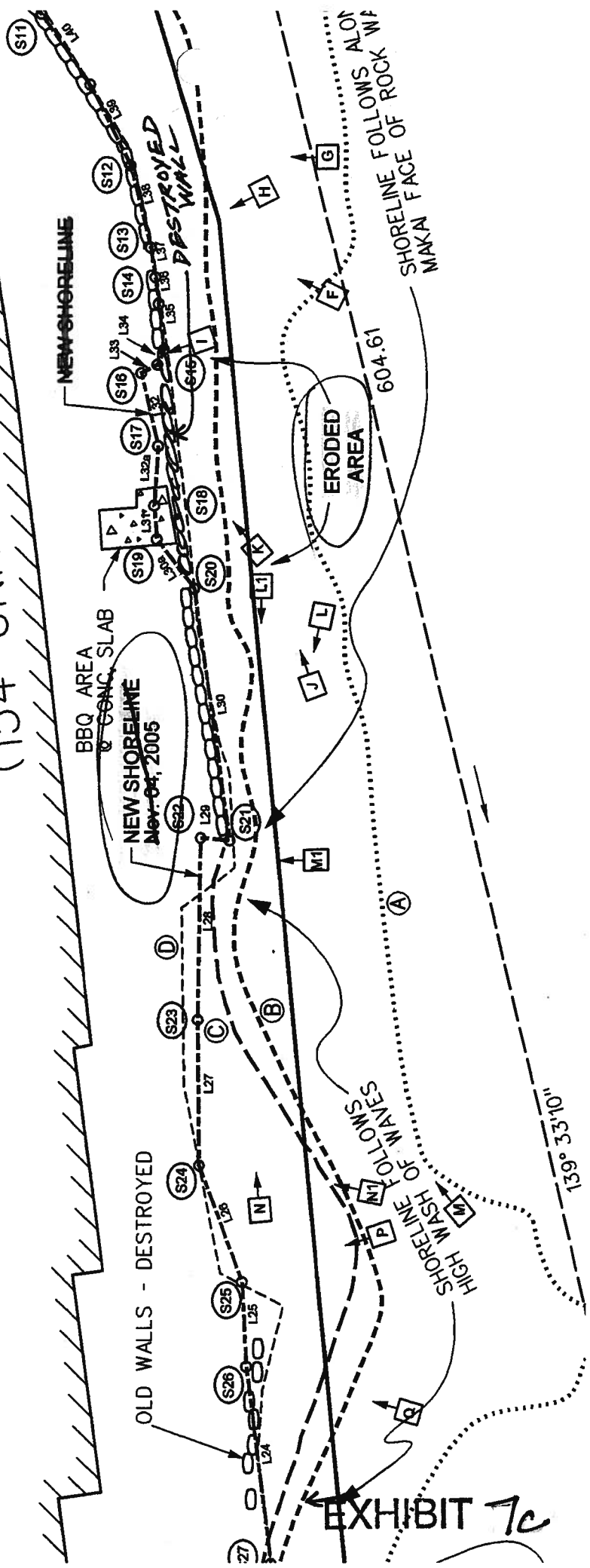


EXHIBIT 7c



RECEIVED
OFFICE OF CONSERVATION
NATURAL RESOURCES
STATE OF HAWAII

2005 JUN 29 P 12: 08

76-6246 Alii Drive • Kailua-Kona, Hawaii 96740


June 27, 2005

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

OCCL Dept of DLNR
Mr. Dolan Eversole
1151 Punch Bowl, Room # 131
Honolulu, HI 96813

Re: Collapsed seawall

Dear Dolan,

Late on June 21, 2005 a portion of our seawall located on the South makai side of the Kona Bali Kai property collapsed. We immediately fenced off the area as safety precautions. 

I went to the Kona Planning Dept the next day and they told me that we had to fill out an SMA form and to submit it to the Planning Department in Hilo.

After talking with the Board of Directors, they asked if the rocks that composed the wall could be retrieved, salvaged and secured until further decisions were made. I inquired as to the possibilities of such and was told that we could not touch the wall at this point and that I needed to get in touch with OCCL, as it was their jurisdiction. After a conversation with you Dolan, I understand that we need permission to retrieve the rocks from the collapsed sea wall.

Therefore, on behalf of the Kona Bali Kai AOA I am asking that we be allowed to retrieve and salvage the rocks from the seawall laying approximately 2' feet from where it originally was standing. Nothing else would be done other than remove the rocks from where the wall fell.

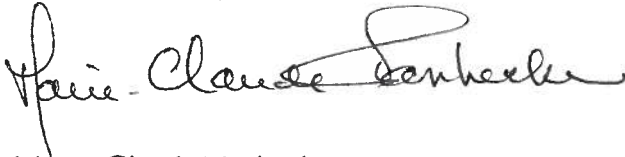
EXHIBIT 8

I have included photographs of the wall and the area where it is now resting, and a copy of the property map. I would appreciate written permission from your department as soon as possible so that we can proceed.

If you need further information or have any more questions. Please feel free to contact me at: (808) 329-8176, or by email at: mcvkbk@hawaii.rr.com

Again, I appreciate your help, understanding and prompt response in this matter.

With warm aloha,

A handwritten signature in cursive script, reading "Marie-Claude Vanhecke". The signature is fluid and elegant, with a large loop at the end of the last name.

Marie-Claude Vanhecke

Kona Bali Kai AOA

Site Manager

808 329-8176 office

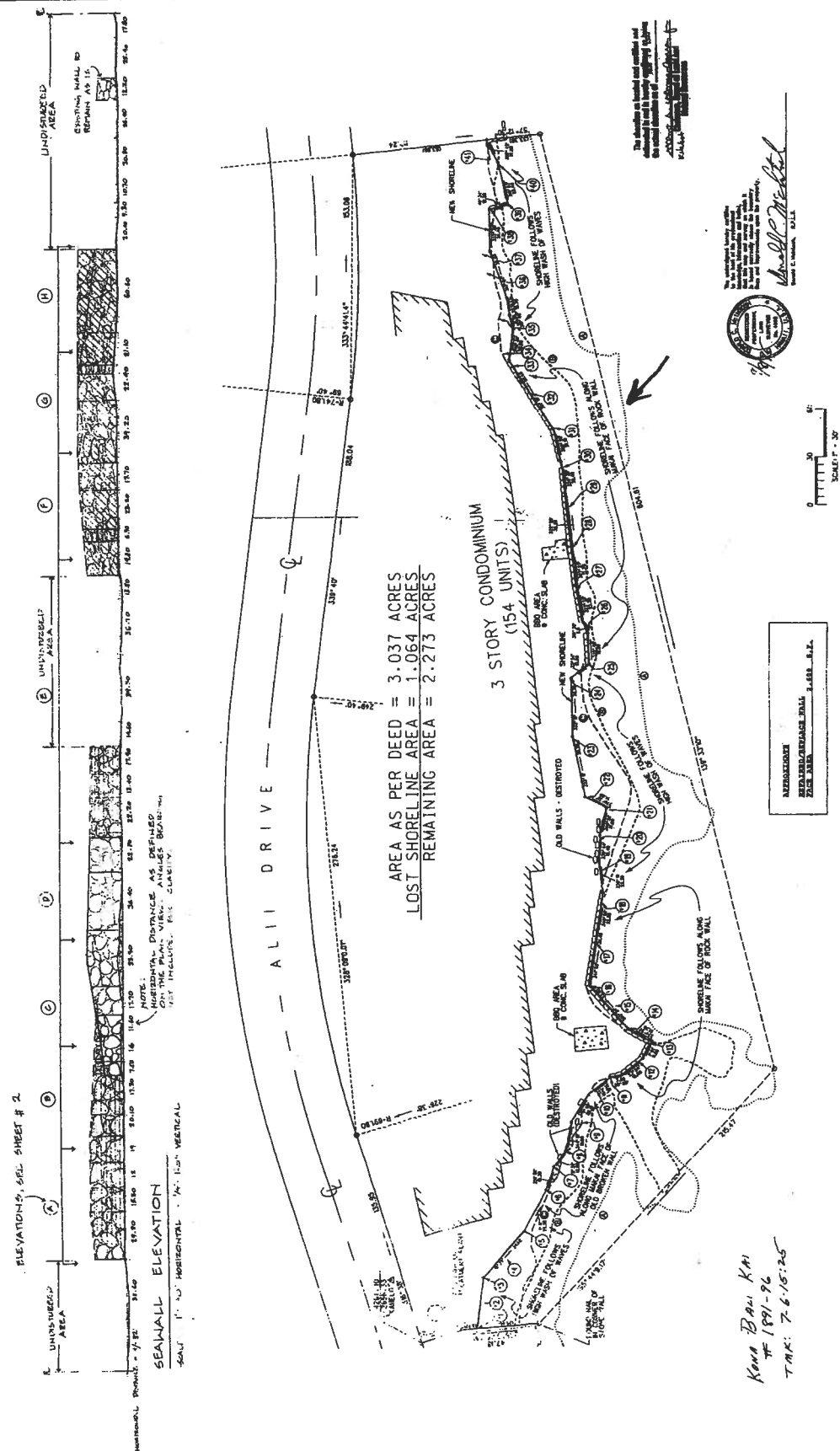
808 327-1695 fax



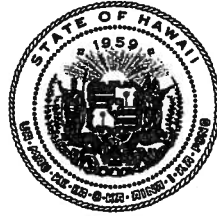
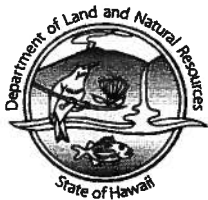
EXHIBIT 8a



EXHIBIT 8b



LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM
7008 1140 0001 0730 6758

ENF: HA 09-09

NOTICE AND ORDER

Kona Bali Kai
c/o William C. Foulk
Parthenon Group, Inc.
75-5656 Kuakini Highway, Ste. 301
Kailua-Kona, HI 96740

SEP 22 2008

Dr. Foulk:

SUBJECT: Unauthorized Land Use In The Conservation District and on Public Land
Seaward & Adjacent to TMK: (3) 7-6-015:023

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District, enacted pursuant to Chapter 183C, Hawaii Revised Statutes (HRS) and Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, HRS.

We have determined the subject area identified seaward of tax map key: (3) 7-6-015:023 is in the Conservation District, Resource subzone and is State unencumbered public land. The stockpiling of earth material has been observed and documented in the shoreline area (EXHIBIT A).

This land use was not authorized by the Department of Land and Natural Resources.

We recommend that you remove the earth material from the shoreline area by October 31, 2008. Please work with the County of Hawaii immediately to identify an appropriate location on or off site or an approved disposal site to place this earth material. For an on site location, best management practices must be implemented to prevent debris, soil, and other contaminants from entering the aquatic environment.

Should you fail to comply with this notice and order, the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per day pursuant to Chapter 183C, HRS and \$1,000.00 per day pursuant to Chapter 171, HRS, in addition to administrative costs incurred by

EXHIBIT 10

Kona Bali Kai
c/o William C. Foulk

ENF: HA 09-09

the Department. Contact Tiger Mills of the Office of Conservation and Coastal Lands at (808) 587-0382 to clear this matter.

for *Ken C. Kawai*
LAURA H. THIELEN, Chairperson
Department of Land and Natural Resources

C: HDLO
DOCARE-KONA
DAR-KONA
County of Hawaii, Planning Department
DOH-Clean Water Branch
Kona Bali Kai c/o Carey Lindenbaum, Esq.

HONOLULU HI 968	
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Dr. W. C. Foulk</i> C. Date of Delivery <i>2/10/04</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>Kona Bali Kai c/o William C. Foulk Parthenon Group, Inc. 75-5656 Kuakini Hwy., Ste Kailua-Kona, HI. 96740</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>Enf.: HA 09-09</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service)</p>	<p>7008 1140 0001 0730 6758</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt</p>	



Site Inspection
Kona Bali Kai
TMK: (3) 7-6-015:023
September 17, 2008

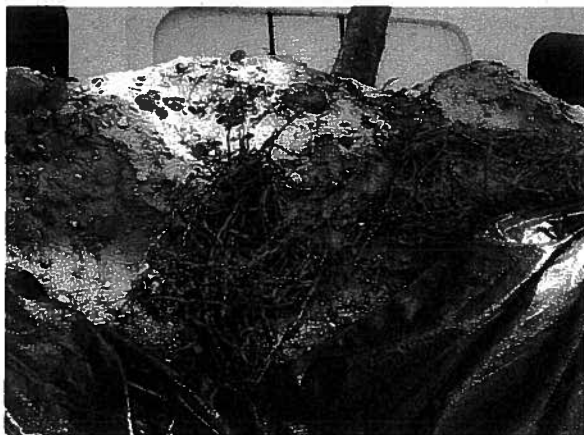


EXHIBIT A



Kimberly
Mills/DLNR/StateHiUS
09/22/2008 10:42 AM

To <careylindenbaum@gmail.com>
cc "william cory foulk" <drfoulk@gmail.com>,
eimamura@co.hawaii.hi.us, rlovato@co.hawaii.hi.us
bcc Sam J Lemmo/DLNR/StateHiUS@StateHiUS
Subject RE: NOTICE AND ORDER

As the shoreline has not been certified, the shoreline has not been established.
The earth material should be clearly beyond and out of reach of the highest wash of the waves.

Please work with the County to determine a proper site to stockpile the material on site.



DOC.PDF
Kimberly K. Tiger Mills, Staff Planner
State of Hawaii
Department of Land & Natural Resources
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809
kimberly.mills@hawaii.gov

CONFIDENTIALITY NOTICE: DO NOT share inappropriate or confidential information here as this information may be considered part of the public record.

"Carey Lindenbaum" <careylindenbaum@gmail.com>



"Carey Lindenbaum"
<careylindenbaum@gmail.com>
m>

09/22/2008 10:12 AM

Please respond to
<careylindenbaum@gmail.com>
>

To <Kimberly.Mills@hawaii.gov>
cc "william cory foulk" <drfoulk@gmail.com>
Subject RE: NOTICE AND ORDER

Tiger

It is my understanding, based on what you stated in our telephone conversation last week that the shoreline is to be established along the alignment of the seawall, including the line which is the site of the renovation and restoration project that has been halted temporarily. Please confirm.

Regards,

Carey Lindenbaum
Attorney at Law
P. O. Box 1981
Kailua-Kona, HI 96745-1981
careylindenbaum@gmail.com

EXHIBIT II

808.331.1071 tel.

The contents of this e-mail message and any attachments may be privileged, confidential, and protected from disclosure. If you are not the intended recipient, any use, dissemination, or reproduction of this transmission is strictly prohibited. If you have received this transmission in error, please notify the sender by reply e-mail, or by telephone at 808.331.1071, and delete this message and any attachments immediately. Thank you for your cooperation.

-----Original Message-----

From: william cory foulk [mailto:drfoulk@gmail.com]
Sent: Monday, September 22, 2008 9:56 AM
To: Kimberly.Mills@hawaii.gov
Cc: Carey Lindenbaum
Subject: Re: NOTICE AND ORDER

Thanks Kimberly.

I will have them do that immediately. The surveyor has been hired to set where the former shoreline was - I would assume this is the location that all materials need to be mauka of.

If this is correct please send me a quick note to that effect or a clarification on where the "shoreline" is to be established prior to October 31, 2008 so we can comply.

Mahalo,

Dr. William C. Foulk, Ph.D., J.D., AIA

On Mon, Sep 22, 2008 at 9:46 AM, <Kimberly.Mills@hawaii.gov> wrote:

>
> Dr. Foulk,
>
> Attached you will find a notice and order requesting that you remove
> the earth material along the shoreline.
>
> Should you have any questions regarding this matter contact me at
> (808) 587-0382.
>
>
>
> Kimberly K. Tiger Mills, Staff Planner State of Hawaii Department of
> Land & Natural Resources Office of Conservation and Coastal Lands P.O.
> Box 621 Honolulu, Hawaii 96809 kimberly.mills@hawaii.gov
>
>
> CONFIDENTIALITY NOTICE: DO NOT share inappropriate or confidential
> information here as this information may be considered part of the
> public record.
>
>
>

EXHIBIT 11a



"william cory foulk"
<drfoulk@gmail.com>

10/21/2008 03:02 PM

To Kimberly.Mills@hawaii.gov

cc Sam.J.Lemmo@hawaii.gov

bcc

Subject Re: Status of Stockpile of material

Ms. Mills,

Thank you, we will resend. It is our hope you will send an agent to direct us. The Bali Kai has engaged a surveyor who has been working with Mr. Conger for some time on this shoreline, over two years now. Without a formal line to remove material to or beyond, we are at a loss. The seaward most material in question is holding many mature palms upright, most of which are over 70 feet in height. We would request a review and directive on the ground as to how you would like to handle this circumstance in it's entirety. We feel that with a proper and prompt direction we can still comply with your October 31, 2008 deadline.

Thank you,

Dr. William C. Foulk

On Tue, Oct 21, 2008 at 1:40 PM, <Kimberly.Mills@hawaii.gov> wrote:

>
> I have reviewed our Office mail log and we have no record of the documents
> that were sent.
>
> Please resend this information. Mail to: Samuel J. Lemmo, Administrator,
> Office of Conservation and Coastal Lands, P.O. Box 621, Honolulu, HI,
> 96709
> E-mail or Fax (587-0322) would be fine
>
> I have been forwarding your e-mails and have included my supervisor in my
> responses to you.
>
> Kimberly K. Tiger Mills, Staff Planner
> State of Hawaii
> Department of Land & Natural Resources
> Office of Conservation and Coastal Lands
> P.O. Box 621
> Honolulu, Hawaii 96809
> kimberly.mills@hawaii.gov
>
>
> CONFIDENTIALITY NOTICE: DO NOT share inappropriate or confidential
> information here as this information may be considered part of the public
> record.
>
>
>
>
> "william cory foulk" <drfoulk@gmail.com>
>
> 10/21/2008 12:20 PM
>
> To

EXHIBIT 12

> Kimberly.Mills@hawaii.gov
 > cc
 > "Carey Lindenbaum" <careylindenbaum@gmail.com>
 > Subject
 > Re: Status of Stockpile of material
 >
 >
 >
 >
 > Ms. Mills
 >
 > You were copied with the same material. The jurisdiction was the item
 > in question, and the submittal showed all agencies the surveyors data
 > on heights relative to MSL, locations relative to the shoreline wash
 > so on of all features. This was sent out so all agencies could begin
 > to determine their jurisdictions, and those whose jurisdiction was
 > beyond the range of the work in question could withdraw and allow a
 > more correct path to compliance.
 >
 > Please include your supervisors address in any future correspondence
 > as we find it to be important he / she be receiving all the
 > communication and not just one side of it.
 >
 > Thank You,
 >
 > Dr. William C. Foulk
 >
 > On Tue, Oct 21, 2008 at 12:10 PM, <Kimberly.Mills@hawaii.gov> wrote:
 >>
 >> Mr. Foulk,
 >> Why would we receive information that was sent to the Department of
 >> Health
 >> or the Army Corps?
 >> Unless you sent information directly to us, we would not receive it.
 >> Do not assume we will get information, send information directly to us.
 >>
 >> Different agencies have different jurisdictions.
 >> In this case our jurisdiction is the highest wash of the wave.
 >>
 >> You need to remove the material from the shoreline area by the stated
 >> timeframe. Please work with the County to identify a suitable location.
 >>
 >> Kimberly K. Tiger Mills, Staff Planner
 >> State of Hawaii
 >> Department of Land & Natural Resources
 >> Office of Conservation and Coastal Lands
 >> P.O. Box 621
 >> Honolulu, Hawaii 96809
 >> kimberly.mills@hawaii.gov
 >>
 >>
 >> CONFIDENTIALITY NOTICE: DO NOT share inappropriate or confidential
 >> information here as this information may be considered part of the public
 >> record.
 >>
 >>
 >>
 >>
 >> "william cory foulk" <drfoulk@gmail.com>
 >>

EXHIBIT 12a

127

>> 10/21/2008 11:39 AM
>>
>> To
>> Kimberly.Mills@hawaii.gov
>> cc
>> "Carey Lindenbaum" <careylindenbaum@gmail.com>
>> Subject
>> Re: Status of Stockpile of material
>>
>>
>>
>>
>> Tiger -
>>
>> Didn't you receive the material that was sent to the State Health
>> Department and the Corps of Engineers? We were coordinating with them
>> on point. It is critical that someone at the State decide on the
>> hierarchy here.
>>
>> The Bali Kai does want to comply, is trying very hard to satisfy the
>> various mandates, but is very confused by the complete lack of
>> communication inter-agency and the seeming legal conflicts that are
>> beginning to become apparent in what is beginning to seem like a
>> random and capricious enforcement action.
>>
>> Dr. Foulk
>>
>> On Tue, Oct 21, 2008 at 11:15 AM, <Kimberly.Mills@hawaii.gov> wrote:
>>>
>>> Has this matter been resolved?
>>>
>>>
>>>
>>> Kimberly K. Tiger Mills, Staff Planner
>>> State of Hawaii
>>> Department of Land & Natural Resources
>>> Office of Conservation and Coastal Lands
>>> P.O. Box 621
>>> Honolulu, Hawaii 96809
>>> kimberly.mills@hawaii.gov
>>>
>>>
>>> CONFIDENTIALITY NOTICE: DO NOT share inappropriate or confidential
>>> information here as this information may be considered part of the public
>>> record.
>>>
>>>
>>>
>>
>>
>
>

EXHIBIT 12b

12b



"william cory foulk"
<drfoulk@gmail.com>
10/21/2008 01:07 PM

To kimberly.mills@hawaii.gov
cc "Carey Lindenbaum" <careylindenbaum@gmail.com>
bcc
Subject follow-up

Ms. Mills -

The difficulty in removing the landscaping materials, which per the earlier communication are simply beach sand from the beach that was there prior to wall construction, is the determination of the high water wash. Since the shoreline was set by the wall which was washed out, the only real data is the FEMA flood map, which shows the centerline of Alii Drive as being the edge of the VE zone.

Without Chris Conger to determine the likely high wash location, and left with only the old shoreline and the current condition (wherein the material is above the high wash of the waves to date) our client is at a loss. We doubt the intention of the State is to have all landscaping materials on the entire site be removed - everything between the ocean and the center of Alii Drive on the far opposite side of the building. We also doubt the intent is to endanger the buildings proper by undermining the foundations with the removal of material. The seawall was being reconstructed to not only prevent the erosion of material and possible water pollution therein, but also to preserve the buildings, which are in danger of having their foundations undermined now there is no-longer a seawall in place.

Hence, the larger removal of material to some undetermined distance may be placing lives and property at risk. Precisely why we need your involvement at a direct level to take responsibility for any directive to remove and specify an exact distance. We would therein hope to dilute liability by offering your directive up when catastrophic damage occurs.

Thank you,

Dr. William C. Foulk, Ph.D., J.D.



Site Inspection November 6, 2008

Kona Bali Kai

EXHIBIT 14

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUIJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM
CERTIFIED/RETURN MAIL
7008 1140 0001 0730 6819

ENF: HA 09-09

NOTICE AND ORDER

Kona Bali Kai
c/o William C. Foulk
Parthenon Group, Inc.
75-5656 Kuakini Highway, Ste. 301
Kailua-Kona, HI 96740

NOV 14 2008

Dr. Foulk:

**SUBJECT: Unauthorized Land Use In The Conservation District and on Public Land
Seaward & Adjacent to TMK: (3) 7-6-015:023**

Pursuant to our Notice and Order dated September 22, 2008, requesting that earth material be removed from the shoreline area by October 31, 2008, the Department is issuing you another Notice and Order as you have failed to comply with the former Notice and Order. You have been directed to work with the County of Hawaii to identify a site to stockpile material.

A correspondence from the County of Hawaii to you dated October 6, 2008, requests that you submit either (1) a site plan denoting the appropriate onsite location where the stockpiled material will be placed, or (2) identify the approved off site landfill that will receive the stockpiled material and in either case indicate where the staging area will be located and the types of equipment that will be used and where and to submit a work schedule to the County and the Department of Land and Natural Resources (DLNR). We have not received any of this information yet.

According to e-mails received from you by staff, you had indicated that information that had been forwarded to the State Health Department and the Corps of Engineers regarding this matter would be forthcoming to our Office of Conservation and Coastal Lands (OCCL). OCCL has not received this information. The OCCL did receive an unsigned survey with no cover letter. Phone calls to the survey company indicated that the survey should not be interpreted in any way as it was unsigned, for client review only and should be destroyed.

Via e-mail to staff, you have further requested review and comment of a draft BMP for the temporary control of landscaping utilizing erosion control blankets "until the entire process of permitting the seawall is completed."

EXHIBIT 15

The Department does not agree to the proposed erosion control consisting of anchored erosion control blankets and backfill dated November 6, 2008.

Please note the entire process of permitting the seawall requires that you comply with our current request of removing the stockpiled material away from the shoreline. Photos taken on November 6, 2008 (**Exhibit A**) indicate that little has been done to prevent debris, soil, and other contaminants from entering the aquatic environment.

As the shoreline in the vicinity of the demolished seawall is unclear, please work with the County of Hawaii, as the proposed site shall be under their jurisdiction, to identify an area that is clearly beyond the certified shoreline such as to the point to the north on the grass mauka of the existing seawall in that area.

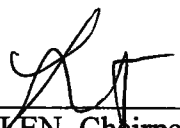
NOTICE IS HEREBY GIVEN that you are still in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District, enacted pursuant to Chapter 183C, Hawaii Revised Statutes (HRS) and Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, HRS.

Please remove the earth material from the shoreline area by December 1, 2008.

Should you fail to comply with this second notice and order, the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per day pursuant to Chapter 183C, HRS and \$1,000.00 per day pursuant to Chapter 171, HRS, in addition to administrative costs incurred by the Department.

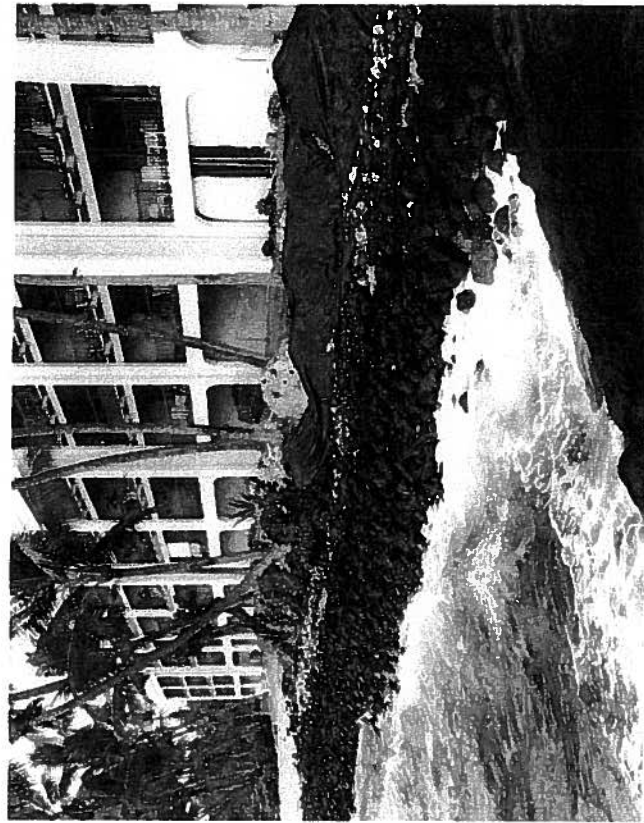
Furthermore, for your information, electronic communication (e-mails) may be compromised and are not logged and tracked. Should e-mails be blocked or if staff does get to your e-mail in a timely basis, your request may not be processed. Should you require review and comment regarding land uses in the shoreline, please mail or courier deliver a hard copy of this information to the OCCL.

Contact Sam Lemmo of the Office of Conservation and Coastal Lands at (808) 587-0377 to clear this matter.



LAURA H. THIELEN, Chairperson
Department of Land and Natural Resources

C: HDLO
DOCARE-KONA
DAR-KONA
County of Hawaii, Planning Department
DOH-Clean Water Branch
Kona Bali Kai c/o Carey Lindenbaum, Esq.



Site Inspection November 6, 2008

Kona Bali Kai

EXHIBIT A



"william cory foulk"
<drfoulk@gmail.com>
11/14/2008 05:05 PM

To DLNR.OCCL@hawaii.gov, kimberly.mills@hawaii.gov,
"Imamura, Esther" <EIMAMURA@co.hawaii.hi.us>,
peter.c.Galloway@usace.army.mil, "Carey Lindenbaum"

cc

bcc

Subject Tiger follow-up for Chris Conger

History:  This message has been replied to.

Ms. Mills -

Thank you Tiger for the advance copy of your latest directive.

Per our phone conversation at 4:45 Friday, I would like to speak to Chris Conger about his progress with Hawaii Boundary, the Licensed Surveyors hired some time ago to achieve a current certified shoreline.

It was noted by you that Mr. Conger would be in Monday morning at 7:45. I will expect a call from him then.

As we all know, without a document to designate the high-wash of the waves, there is no location to "stock-pile" this material without endangering the existing structure and the public therein. The act of removing the material, which was emplaced in 1906 and is very well documented as having been there since that time, will promote erosion beneath the nearby footings of the multi-story condominium complex whose weight is carried by this material.

Our office will continue to belabor this point until it is properly addressed by all agencies. We will not underwrite public endangerment. There is a simple and proper solution that conforms to all EPA and Clean Water Standards, the Hawaii Department of Health mandates and the needs of the County of Hawaii and other agencies. This solution does not require endangering property or lives as the order of Mr. Lemmo seems bent upon doing. We would assume your office has not been communicating internally with Mr. Conger or other field representatives of the DLNR that might give you a better perspective of the actual conditions on site.

We will follow-up on Monday with your agency via Mr. Conger.

Aloha,

Dr. William C. Foulk

EXHIBIT 16

Kona Bali Kai Chronology

November 19, 1995-Certified shoreline of the parcel identified the makai face of the existing seawall alignment as the certified shoreline.

March 15, 1996 -Records on file indicate that the ocean's energy has destroyed portions of a seawall over the years. Correspondence indicates the wall "has deteriorated on the ocean side. At times high wave wash actually spilled over the wall. There was structural damage to the wall as a result of rocks being loosened." A request for repair by filling all stone joints with mortar mix and a survey of the area accompanied this description. As the proposed work appeared to be maintenance, the filing of a CDUA was not required.

May 8, 1996-Under Special Management Area Use Permit 96-19, the County of Hawaii authorized repair and replacement of the wall.

August 28, 2000-Authorization was again granted by the County of Hawaii under Special Management Area Use Permit Assessment Application No. 00-24 (SMAA00-24) to allow the repair and replacement that included reconstruction of \approx of 55 lineal portions of an existing seawall.

June 27, 2005-Correspondence that included photos of a collapsed seawall and a request to retrieve the rocks from the former structure. The OCCL responded recommending that a certified shoreline be obtained.

November 23, 2005-A request for shoreline certification was made noting, "the old wall has been destroyed and a portion of the BBQ area slab has been eroded away...The erosion has not been gradual, but violent with the above-normal wave action due to storms...rocks washed ashore into the condo's parking area-some 20 to 30 feet from the shoreline."

January 9, 2006-The application for shoreline certification was not accepted, as it was incomplete. The applicant was requested to submit copies of documents supporting that the seawall had been approved or exempt from 13-222-7, HRS.

February 10, 2006-An application for shoreline certification received by DLNR.

February 24, 2006-DLNR/DAGS staff conducted a site visit. During this visit, the surveyor left and staff was unable to relate concerns and recommendations to Kona Bali Kai's surveyor.

March 23, 2006-State recommendations and concerns in a correspondence sent to Kona Bali Kai's surveyor.

May 10, 2006-DLNR rejects the shoreline certification application as the surveyor failed to incorporate DLNR's concern within the 90-day application-processing period.

September 22, 2006-New application submitted by Kona Bali Kai's surveyor.

September 26, 2006-Unscheduled site visit to confirm that map and photos submitted in the application correctly depicted the changes originally requested in March.

October 18, 2006-Site inspection of the shoreline conducted.

December 20, 2006-DLNR extends the time to process the shoreline certification application to April 8, 2007.

February 23, 2007-State Surveyor recommends the shoreline be rejected, as the applicant's surveyor has not responded in over 4 months to requests to submit revised maps and photographs.

March 8, 2007-Shoreline certification is rejected.

June 20, 2007-Correspondence received from Kona Bali Kai's counsel stating that a certified shoreline application would be 'submitted shortly' and a request to erect temporary erosion control. Contact made with applicant's counsel that more information would be required regarding the proposed sand bags and sediment to be used.

June 22, 2007-the County of Hawaii determines that proposed repair and renovation to a seawall is exempt pursuant to Special Management Area Use Permit Assessment Application (SAA 07-000258).

February 13, 2008-Silica sand and site sand samples received by OCCL in regards to the June 20, 2007 request. The sand is not acceptable for the site.

June 2008- Complaints received regarding the shoreline activities taking place fencing of the beach. OCCL contacts Kona Bali Kai by phone and requests that fencing blocking beach access be removed from the sandy area. Also referred complainers to the County of Hawaii.

August 4, 2008-County of Hawaii issues a Notice of Violation and cease and desist.